

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

PETITION NO.136 OF 2003

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Manish Prabhakar Patil @

Manish Pandurang Halde ...Petitioner

v/s.

Narendra Gurunath Patil ...Caveator

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Mr.T.G.Vora i/b Mrs.B.S.Shivare for the Petitioner.

Mr.V.Mannadiar i/b Mannadiar & Co. for the
Respondent/caveator.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD MARCH, 2007

P.C.:

1. This application for succession certificate has

been filed for succession certificate in relation to debts set forth in the Schedule in regard to the deceased by name Prabhakar Gurunath Patil.

2. In this petition, initially only the Petitioner Manish was disclosed as an heir left behind by the deceased. The succession certificate was granted. Then there was petition filed for revocation of that succession certificate being Misc.Petition No.43 of 2002. That petition was filed by Mr.Narendra Gurunath Patil claiming to be the brother of the deceased Prabhakar Gurunath Patil. In that petition apart from claiming revocation of succession certificate on the ground that though there were heirs left behind by the deceased they were not cited as heirs in the succession certificate, it was also contended that adoption deed on the basis of which the Petitioner is making the claim that because the deceased had adopted the Petitioner he is the only heir is invalid. It was also claimed that the deceased was not party to the adoption deed which is relied on by the Petitioner, because Adoption Deed is between Pandurang Babu Halde and one Mr.Prabhakar Gunaji Patil, whereas the name of the deceased was Mr.Prabhakar Gurunath Patil. It was also alleged

that adoption is invalid, because on the date of adoption the Petitioner was about 21 years of age.

3. By consent of parties by order dated 6th July, 2006 the Succession Certificate was revoked and the petition was restored. Leave to amend the petition was granted to the Petitioner. Pursuant to the leave granted the Petitioner amended the petition. Cited four brothers of the deceased as heirs. One brother Narendra has filed a caveat. He has also filed affidavit in support of the caveat. The same objections which were raised earlier about the validity of the adoption deed have been raised. According to the caveators, as per Section 10 of the Hindu Adoption & Maintenance Act, unless there is a custom or usage applicable to the parties which permits the person who has completed the age of 15 years being taken in adoption, the person being adopted should be below 15 years of age.

4. According to the caveator, in the petition there is no where pleaded that there is a custom prevalent in the community to which the parties belong permitting adoption of a person who is more than 15 years of age. It is further submitted that the

deceased was not a party to the deed of adoption. It is submitted that to the deed of adoption the person by name Prabhakar Gunaji Patil was the party, whereas the death certificate filed by the Petitioner himself shows that the name of the deceased was Prabhakar Gurunath Patil. In the petition initially filed, there is no explanation about the discrepancy. Though this objection was specifically raised in the revocation petition, though this court granted leave to amend the petition, even now there are no averments found in the petition explaining the discrepancy in the name of the father of the person who is party to the adoption deed and the name of the person mentioned in the death certificate on which the Petitioner relies. The learned counsel appearing for the Petitioner relied on the judgment of the Supreme Court in the case of Kondiba Rama Papal alias Shirke (dead) by his heirs & LRs & another v/s. Narayan Kondiba Papal, AIR 1991 SC 1180.

5. Perusal of that judgment shows that in that judgment the Supreme Court has held that in the Bombay State a custom is prevalent which permits adoption of children who are more than 15 years of age. It is further held that once the custom is

judicially recognised, it is not required to be independently proved in subsequent proceedings. But this judgment does not lay down as a law that it is not necessary for the person who is relying on the custom to plead that there is such a custom and that the parties to the adoption belongs to the Bombay State. The State of Bombay in relation to which the prevalence of the custom is recognised is the Bombay State as it existed before re-organisation of States in 1956 and 1960. Therefore, in order to take advantage of that custom and usage the Petitioner will have to allege that both the parties to the adoption deed belong to the State of Bombay which existed before the reorganisation of States. In the present case neither any reliance is placed on any custom nor there is any pleading to be found that the parties belong to Bombay State as it existed before 1956 or even thereafter. In my opinion, in the absence of any pleading in relation to custom, it cannot be said that the adoption of the Petitioner by the deceased by the adoption deed dated 17th May, 1999 is valid.

6. Perusal of the Adoption deed shows that the name of the person who is party to the Adoption deed is

Mr.Prabhakar Gunaji Patil, whereas the name on the Death Certificate on which the Petitioner relies shows the name of the deceased as Mr.Prabhakar Gurunath Patil. Really speaking in view of this discrepancy it was for the Petitioner to plead in the petition as to how this discrepancy appears, that whether the father of deceased was known by two names namely Gurunath and Gunaji. In the petition as originally filed there were no pleadings found to this effect. This objection was raised in the Revocation Petition. Though the petition has been amended after succession certificate initially granted was revoked, there is no amendment effected in the petition explaining the discrepancy. In the absence of any proper explanation given of the obvious discrepancy, the case put up by the caveator has to be accepted.

7. Taking overall view of the matter, therefore, the Petitioner is not entitled to succession certificate. Petition is disposed of.

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